

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VALVE CORPORATION,

Petitioner,

V.

JENNIFER A. NELSON, et al.,

Respondents.

Case No. 2:24-cv-1717-JNW

**RESPONDENT LUKE NINEMIRE'S
MOTION FOR CLARIFICATION RE
VALVE CORPORATION'S LCR 7(I)
NOTICE OF WITHDRAWAL OF
PETITION AS TO RESPONDENT
LUKE NINEMIRE**

**NOTE ON MOTION CALENDAR:
December 16, 2024**

Respondent Senior Airman Luke Ninemire (“Respondent” or “SrA Ninemire”), through his undersigned counsel, files this motion for clarification regarding Valve Corporation’s (“Valve”) Notice of Withdrawal of Petition as to Respondent. Dkt. 23 (the “Notice”). This motion is necessitated by Valve’s contradictory positions and procedural gamesmanship, which has created confusion concerning the procedural posture of this matter.

L.FACTS

On October 18, 2024, Valve initiated this proceeding by filing a petition against SrA Ninemire (among others) and a motion to enjoin his arbitration. Dkts. 1–4.

1 Valve immediately used its filing to argue to numerous arbitrators, including the one
 2 presiding over SrA Ninemire's case, that their arbitrations should be halted. On the morning of
 3 October 23, 2024, the arbitrator presiding over SrA Ninemire's arbitration agreed with Valve
 4 and stayed his arbitration, concluding that "the stay of these arbitrations shall remain in effect
 5 pending a ruling by the court in *Nelson*", i.e., **this Court.** **Ex. A** (October 23, 2024, AAA e-mail
 6 transmitting Arbitrator Brooks Order), at 2.

8 On the night of October 22, 2024, Valve e-mailed Respondents' counsel, Mr. Bucher,
 9 stating that:

10 Valve will provide you until Friday, October 25, 2024, to inform Valve if you are
 11 representing each Respondent in th[is] action and, if so, whether you have been
 12 authorized to accept service on their behalf, provided that (1) on Friday, October
 13 25, 2024, you provide a complete list of each Respondent you are representing
 14 who has agreed that you may accept service on their behalf so Valve can avoid
 15 having to personally serve them; (2) you agree that Valve is providing this
 extension as a courtesy solely because you have requested additional time; and (3)
 you will not attempt to argue that any delay in serving Respondents somehow
 precludes or impairs Valve's right to seek injunctive relief.

16 **Ex. B.** When Mr. Bucher asked that Valve send waivers of service pursuant to FRCP 4, Valve
 17 ignored him. Instead of conferring in good faith, Valve asked the Clerk to issue summonses
 18 under FRCP 4, using the default summons form for civil actions. Dkt. 10. This form provides
 19 that (i) a response is required within 21 days under Fed. R. Civ. P. 12, (ii) failure to timely
 20 respond may result in a judgment by default for all the relief demanded in the complaint, and
 21 (iii) any response shall be served on Valve or Valve's attorney. *Id.* at 1.¹ The Clerk signed and
 22 issued the summonses the next day. Dkt. 11.

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25 ¹ Valve's request of the Clerk in this regard seems to conflict with Valve's current position that
 26 its petition is a motion subject to service and notice under Rule 5. See Local Rules W.D.
 Wash., LCR 4(a) ("It is the ***obligation*** of a party seeking the issuance of a summons by the

1 Armed with the summonses obtained under Rule 4, Valve immediately began serving
 2 all 624 Respondents, baiting them into responding directly to Valve even though Valve knew
 3 they were represented by counsel in pending arbitrations. *See generally* Dkts. 12–13 (*ex parte*
 4 motion evidencing communications from Respondents); Dkts. 27–35 (“SERVICE OF
 5 SUMMONS and Complaint”). Although it had already managed to stay his arbitration, Valve
 6 served SrA Ninemire anyway, perhaps based on the assumption that he is entitled an
 7 opportunity to be heard in this proceeding.

8 On November 14, 2024, 21 days after he was served with Valve’s summons and
 9 related papers, SrA Ninemire answered Valve’s petition as the summons instructed him to do,
 10 explaining the bases he intended to assert to oppose Valve’s petition and motion. Dkt. 16. He
 11 also filed a motion to stay this proceeding under the Servicemembers’ Civil Relief Act, which
 12 entitled him an absolute statutory right to stay any civil proceeding for 90 days. Dkt. 20.
 13

14 On November 15, 2024, the next day, Valve filed a “Notice” under Local Rules W.D.
 15 Wash., LCR 7(l) (“LCR 7(l)”) purporting to unilaterally (i) withdraw Valve’s petition solely
 16 against SrA Ninemire “without prejudice” and (ii) moot SrA Ninemire’s motion to stay. *Id.* at
 17 1. Valve’s stated reason for doing so: “Valve learned Mr. Ninemire is a service member on
 18 active duty deployed overseas. Valve has no desire to be in active litigation with a deployed
 19 service member.” *Id.*²

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 23 clerk to present the summons to the clerk in the *proper form*, prepared for issuance, with
 sufficient copies for service.”) (emphasis added).

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 26² To be sure, the stated reason was disingenuous insofar as Valve was aware of SrA
 Ninemire’s deployment *as of October 29, 2024*, when SrA Ninemire sent Vavle’s attorneys an
 e-mail explaining that he was “currently deployed and serving in Iraq.” Dkt. 13–6 (Ex. F to
 Valve *ex parte* motion).

1 On November 21, 2024, Valve renoted its petition and motion to enjoin as to certain
 2 Respondents for consideration on December 2, 2024. Dkt. 26. Simultaneously, Valve filed a
 3 reply, arguing that its motion to enjoin must be granted because (i) it was served on numerous
 4 Respondents between October 24 and October 30; and (ii) all of those Respondents have
 5 defaulted by not timely responding. Dkt. 24 at 2. According to Valve, “because the Petition was
 6 filed as a 28-day motion and the Summons required a response within 21 days of service, the
 7 October 24-30 Served Respondents’ deadline to oppose the Petition was between November
 8 14, 2024, and November 20, 2024.” Dkt. 24 at 2.

9
 10 On November 22, 2024, in support of its renoting notice and reply urging its petition
 11 be granted, Valve filed proofs of service with the Court, Dkts. 27–35, again taking the position
 12 that its service was governed by Rule 4. *See* Dkt. 10-2 (Valve summons form), at 2 (stating that
 13 proofs of service “should not be filed with the court unless required by Fed. R. Civ. P. 4(l)”).
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15 II. ARGUMENT

16 A. Valve’s Inconsistent Positions

17 SrA Ninemire brings this motion for clarification because Valve’s is playing a game of
 18 procedural “gotcha” in which Valve advocates alternating, self-contradictory positions as
 19 circumstances require. As set forth below, it has done so with respect to the agreement to
 20 arbitrate, as well as the rules of civil procedure. The Court should clarify the resulting
 21 procedural muddle, to permit this matter to be addressed on the merits rather than through
 22 Valve’s gamesmanship.
 23

24 *First*, Valve has taken inconsistent positions with its customers. Valve initially moved
 25 *this* Court to compel its customers to arbitrate. Dkt. 20, at 5–7. Then, when customers brought
 26 arbitrations, defeated its motions to dismiss, and were pressing towards merits hearings, Valve

1 sprung a new “clickwrap” contract via popup on them, purporting to retroactively return claims
 2 to courts. It gave no new consideration, nor the option to decline. *Id.*

3 ***Second***, Valve has taken inconsistent positions with respect to SrA Ninemire. It sought
 4 (and *got*) a stay of SrA Ninemire’s arbitration so that this Court could resolve whether the
 5 arbitration should be enjoined. It then used his e-mail explaining that he was deployed to
 6 request permission from this Court to tell him directly to dismiss his arbitration in exchange for
 7 not being sued. Dkt. 12, at 7 (Valve proposed e-mail to Mr. Ninemire). But when SrA Ninemire
 8 responded to the petition and exercised his right to stay this proceeding, Valve suddenly had
 9 “no desire to be in active litigation with a deployed service member”. Dkt. 20.

10 ***Third***, Valve has taken inconsistent interpretations of the civil rules. Valve submitted
 11 proposed summons to the Court instructing Respondents that Valve’s petition is subject to
 12 service under Rule 4 and Respondents’ responses were subject to Rule 12 and Rule 55. Then,
 13 when SrA Ninemire complied with the instructions in the summons and sought a stay, Valve
 14 changed to arguing its petition is a motion, but that responses were due 21 days after service on
 15 threat of default under Rule 4. Dkt. 24. But under Rule 5, service of motions must be made
 16 upon counsel, not via summonses.

17 Valve’s actions are hopelessly self-contradictory and raise a host of novel procedural
 18 issues that make normally simple tasks—such as calculating deadlines for a response—
 19 impossible. What is more, even if one complies with Valve’s agreements, instructions, and/or
 20 arguments, Valve does not hesitate to contradict former positions to manufacture procedural
 21 advantages and vitiate its customers’ ability to respond. As such, every filing Valve makes
 22 should be viewed through the lens of how its adversaries (and the Court) are being set up for a
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1 bait and switch. Whether that switch occurs here, or when decisions of this Court are on appeal,
 2 what Valve advocates today will most likely not be what it advocates tomorrow.

3 This is not acceptable, especially at the heels of Valve already playing fast and loose
 4 with ethical rules in seeking *ex parte* communications with represented litigants. Indeed,
 5 Valve's various substantive and procedural flip-flops are all attempts to avoid facing the merits
 6 of its unilaterally binding, no-consideration, mid-arbitration agreement to not arbitrate. Valve's
 7 tactics are contrary to "the strong policy underlying the Federal Rules of Civil Procedure
 8 favoring decisions on the merits." *United Fin. Cas. Co. v. Rapid Age Grp. LLC*, 2024 WL
 9 2325277, at *1 (W.D. Wash. May 22, 2024). The Court should reject this, and set a schedule
 10 for substantive briefing on SrA Ninemire's motion and Valve's petition.

12 **B. Procedural Standard**

13 Pursuant to Your Honor's Chambers Procedures for Civil Actions, most questions may
 14 be answered by consulting the relevant rules and direct emails to Chambers are only allowed
 15 "[i]f questions persist" after consulting those rules. Rules 2.1, 2.2.

17 By and large, Judges in this District prefer to interpret the Local Rules in orders rather
 18 than emails (as opposing counsel has requested). *See, e.g., Gebray v. Mayorkas*, No. 2:23-CV-
 19 870-BJR, 2024 WL 342300, at *1 (W.D. Wash. Jan. 30, 2024) (interpreting LCR 7(l) in the
 20 context of that proceeding); *Puget Sound Elec. Workers Healthcare Tr. v. S. Sound Elec., Inc.*,
 21 No. C13-0960JLR, 2014 WL 2938473, at *1 (W.D. Wash. June 30, 2014) ("Viewing the
 22 court's Local Rules as a whole, it is clear that this is not what is intended by Local Rule LCR
 23 7(l). The court declines to read Local Rule LCR 7(l) in isolation, and instead, understand Local
 24 Rule LCR 7(l) in the context of its Local Rules as a whole.").

1 Based on these authorities, the proper procedure for interpretation of Rule 7(l) is via a
 2 fully briefed motion on at least some of the outstanding questions. Two of these questions are
 3 set forth below.

4 **C. The Avoidance of Piecemeal Litigation.**

5 Valve contends that it may simply withdraw its petition as to SrA Ninemire “without
 6 prejudice” and create piecemeal litigation of similar or identical issues that it brought against
 7 624 individuals. Although undersigned counsel is unaware of any on-point authority for Rule
 8 7(l) being read in this way, it is highly prejudicial to SrA Ninemire if Valve is permitted to
 9 bring a petition against 624 individuals raising numerous legal issues that apply commonly, and
 10 then selectively withdraw its motion—as to a respondent or as to an issue—at its sole election.

12 Valve’s conduct should not be condoned for numerous reasons. As set forth above,
 13 Valve *used* its filing of this proceeding to achieve a stay of SrA Ninemire’s arbitration. That
 14 arbitration is now stayed until “the court in *Nelson*” makes a substantive, merits ruling. Ex. A,
 15 at 2. Having already obtained a stay of SrA Ninemire’s arbitration, Valve should not be
 16 allowed, through novel interpretations of the local rules, to now preclude SrA Ninemire from
 17 participating in resolution, on the merits, of Valve’s claim that his arbitration should be
 18 enjoined. Otherwise, SrA Ninemire is left in legal limbo without an opportunity to participate
 19 in the disposition of this proceeding when his arbitration is stayed pending that same
 20 disposition of this proceeding.

23 Indeed, the more reasonable interpretation of LCR 7(l), in the context of this case, is to
 24 require Valve to withdraw its entire petition as to all Respondents. The Court should adopt this

1 more reasonable interpretation of LCR 7(l) and strike Valve's notice of withdrawal as to a
 2 single Respondent that Valve finds inconvenient to its procedural shenanigans.³

3 **D. Mooting Another Party's Pending Motion.**

4 Valve contends that its notice of withdrawal of its petition under LCR 7(l) "moots Mr.
 5 Ninemire's motion filed on November 14, 2024, to stay the proceedings under the
 6 Servicemembers Civil Relief Act, 50 U.S.C. § 3932." Dkt. 23 at 1.

7 Undersigned counsel is unable to locate any authority for the proposition that
 8 withdrawing Valve's petition as to SrA Ninemire somehow automatically moots SrA
 9 Ninemire's motion. In fact, the one authority directly on point provides that "any opposition
 10 papers shall be filed and received by the moving party no later than 15 days after the filing date
 11 of the motion." Local Rules W.D. Wash., LCR 7(d)(3). If Valve intends to oppose the motion
 12 on the grounds that the motion is moot, it should be directed to follow the relevant—and
 13 frequently used—rules for opposing pending motions.

14 Valve's November 21, 2024 renoting notice and reply in support of its motion raise
 15 similar issues. Dkts. 24–26. As set forth above, they also suffer from other fundamental
 16 procedural defects resulting from Valve's practice of selectively following rules it likes (e.g.
 17 FRCP 4) while interpreting away those it does not (e.g. FRCP 5, 7, and RPC 4.2). While none
 18

19 ³ If Valve files a new or amended petition, Valve should be ordered to seek clarification on
 20 whether the petition should be served via Rule 4, as Valve previously presented to the Court,
 21 or Rule 5, as is Valve's current position with respect to treating the petition as a motion. See
 22 *Golden State Foods, Corp. v. Mendoza*, 2014 WL 12589654, at *3–4 (C.D. Cal. Nov. 4, 2014)
 23 (FAA petitions and motions are "to be considered a motion subject to the other procedural
 24 rules governing motions, Rule 5 applies. Rule 5 requires service on a party's attorney if
 25 represented."). There of course remains the more urgent matter addressed in Valve's
 26 inappropriate email to the Court as to whether Valve may continue to disseminate the current
 version of the summons stating that Rule 12 and Rule 55 apply, in light of its position that its
 petition should now be treated as a motion.

1 of these things will be at issue if the Court stays this matter as is statutorily required, SrA
 2 Ninemire reserves the right to raise them in due course.

3 SrA Ninemire seeks clarification on whether a LCR 7(l) “withdrawal” after a party
 4 appears and responds, is an appropriate vehicle for opposing another party’s separate motion.
 5 Indeed, assuming arguendo that Valve’s initial treatment of its petition as a traditional
 6 complaint (and not a motion) was correct, then Valve would have needed a stipulation or this
 7 Court’s approval to withdraw the petition as to SrA Ninemire, given SrA Ninemire’s earlier
 8 filing of an answer and motion to stay. Valve’s attempt to unilaterally withdraw its petition
 9 would be impermissible in that scenario. And, even if its petition/motion is governed by LCR
 10 7(l) alone, that provision similarly provides that “[o]nce a response has been filed, the motion
 11 may be renoted only by filing a stipulation signed by all parties or by order of the court.” In
 12 short, regardless of whether it is a motion or complaint, once a counterparty responds and
 13 invites adjudication on the merits, as was the case with SrA Ninemire, no unilateral withdrawal
 14 should be permitted. The Court should strike Valve’s Notice or at least the portion of the
 15 Notice pertaining to the mooting of another party’s motion.

18 III. CONCLUSION

19 For the above reasons, SrA Ninemire seeks clarification of LCR 7(l) on the issues
 20 identified above.

22 DATED this 25th day of November, 2024.

23 BAILEY DUQUETTE P.C.

24 By: /s William R. Burnside
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I certify that this motion contains less than 4,200 words pursuant to Local Civil Rule 7(e)(3).

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing RESPONDENT LUKE NINEMIRE'S MOTION FOR CLARIFICATION served upon counsel of record herein, as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: November 25, 2024 at La Ventana, Mexico.

s/ William R. Burnside
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